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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. [redacted] 125

ALABAMA DRY DOCK & SHIPBUILDING COMPANY, A CORPORATION,

Petitioner and Appellee Below,

versus

M. W. CALDWELL, HOLLIE B. COBB, JOSEPH W. DARNELL, T. P. DUNCAN, G. C. GREEN, H. H. HYDEN AND C. A. McCULLOUGH,

Respondents and Appellants Below

No. [redacted] 126

ALABAMA DRY DOCK & SHIPBUILDING COMPANY, A CORPORATION,

Petitioner and Appellee Below,

versus

J. J. ANDREWS, MARY HOWTON, J. S. HENDERSON, C. BARNES, WILLIAM AUGUSTA HUNT, SR., JAMES M. EDWARDS AND HENRY GREEN,

Respondents and Appellants Below

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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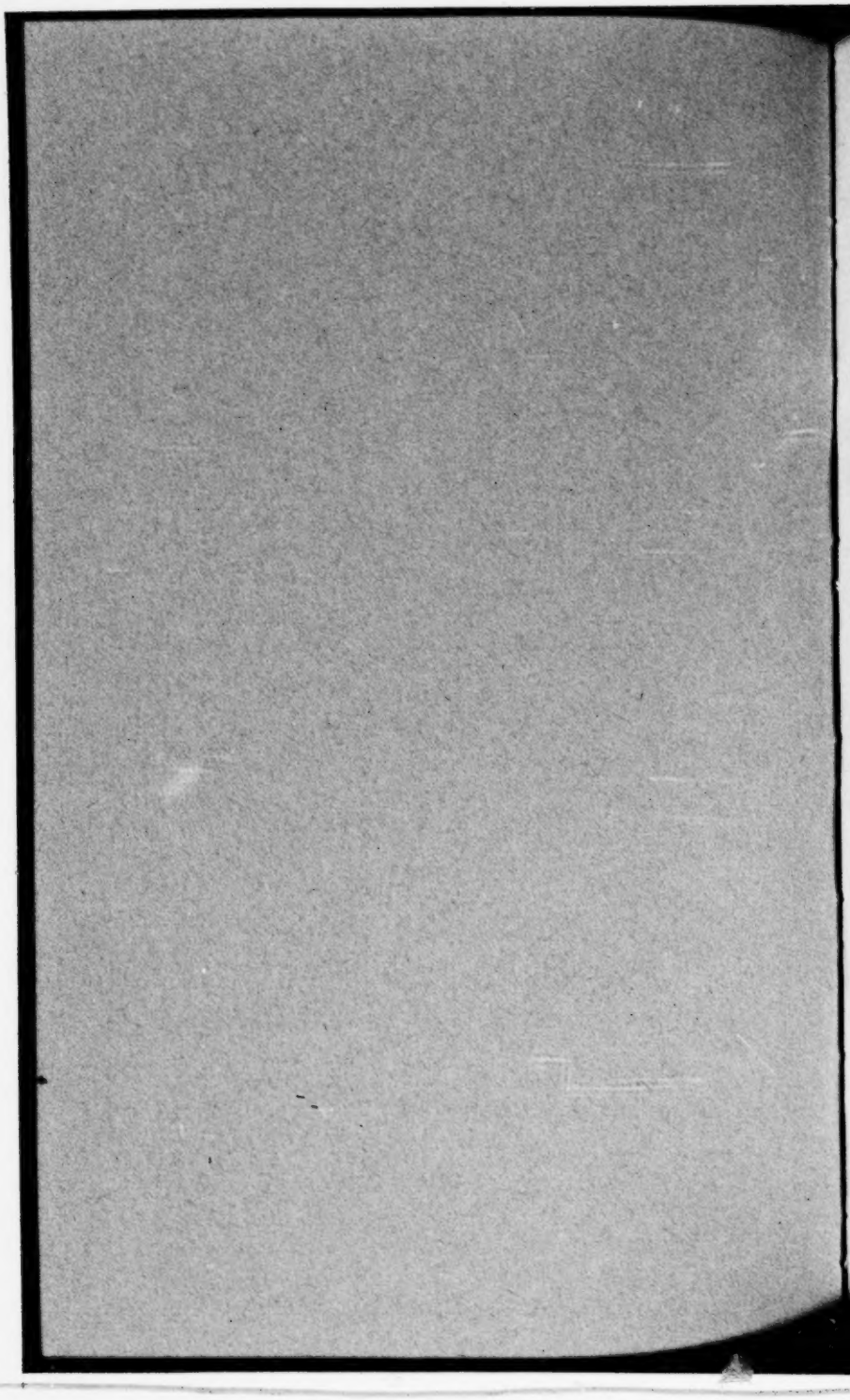

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.————

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Respondents and Appellants Below

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the Alabama Dry Dock & Shipbuilding Company, a corporation, respectfully petitions this Honorable Court for a writ of certiorari in each of these cases, separately, to the United States Circuit Court of Appeals for the Fifth Circuit.

Summary Statement of the Matter Involved

These two cases involve one common point, so, with the approval of the Clerk of this court, they have been consolidated for the purpose of petitioning for writs of certiorari and briefing. This petition, and the brief in support hereof, is directed, separately, to each case.

Only one issue is presented, that of the validity under the Constitution of the United States of an Alabama statute held invalid by the court below, such statute being Act No. 394 of the Legislature of Alabama of 1943 (General Acts of Alabama, 1943, page 363), the pertinent provisions of which are as follows:

> "Section 1. That all suits and actions for the recovery of wages, overtime, damages, fees or penalties accruing under laws respecting the payment of wages, overtime, damages, fees and penalties, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938, as same has been or may hereafter be amended, and all other similar Acts shall be brought within one year after the accrual of such cause of action, and all such causes of action accruing prior to the date hereof shall be brought within one year after the passage of this Act. This Act shall not affect suits pending at the time of its passage."

This statute is hereinafter referred to as the Act of 1943.*1

The two cases are at law and have a common background. On August 27, 1945, Local 18, Industrial Union of Marine & Shipbuilding Workers of America, instituted Civil Action No. 551 against your petitioner in the United States Court for the Southern District of Alabama, Southern Division (Caldwell, R.1; Andrews, R.1). The action was a representative or class suit, brought under Section 16 (b) of the Fair Labor Standards Act of 1938, to recover overtime compensation, liquidated damages and attorneys' fees alleged to be owing to employees of your petitioner by virtue of said federal statute (Tit. 29, U.S.C., Sec. 201-219). The two cases with respect to which this petition is filed arose from proceedings had in connection with such representative or class action.

The second case above arose as follows: On April 12, 1946, respondents J. J. Andrews, et al., were permitted to intervene in Civil Action No. 551 (Andrews, R.15), pursuant to their previous motion (R.12). In answer to the intervening petition, your petitioner pleaded the defense that the intervenors' claims did not accrue within one year next preceding the filing of their motion to intervene, so that they were barred by the statute of limitations established by the Act of 1943 (R.15). Said intervenors then filed a motion to strike that portion of your petitioner's answer asserting the defense of limitations, and in such motion said respondents set up the alleged invalidity of the Act of 1943 under the Constitution of the United States (R.19). The District Court denied said respondents' motion, they declined to plead further on account of the adverse ruling

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*1 The full texts of all state statutes referred to in the body of this petition or the brief in support hereof are contained in the Appendix to said brief.

of the court, and suffered a final judgment against them (R.22). Thereupon, said respondents appealed to the court below, which reversed the judgment of the District Court and remanded the cause for further proceedings not inconsistent with the opinion of the court below (R.45).

The first case above arose as follows: On August 23, 1946, respondents M. W. Caldwell, et al., filed a motion for leave to intervene in Civil Action No. 551 (Caldwell, R.10). The District Court denied this motion upon the stated ground that it appeared from the face of the petition accompanying the motion that the claims asserted therein accrued more than one year before the filing of the motion and hence were barred by Act of 1943; whereupon, the court taxed said respondents with the cost of the motion and ordered execution to issue (R.15). Said respondents then appealed to the court below, which entered a judgment reversing the judgment of the District Court and remanding the cause with directions to allow the intervention and for further proceedings not inconsistent with the opinion of the court below (R.37). *a

The judgment below in both cases was predicated upon the decision of the Circuit Court of Appeals for the Fifth Circuit that the Act of 1943 is invalid under the equal protection clause (Section 1 of Amendment 14) and Article 6 of the Constitution of the United States (Andrews, R.38; Caldwell, R.30). No question is raised as to the reasonableness of the time limitation of one year established by the Alabama statute; or as to the propriety of the appli-

*a We submit that the District Court did not have the right to assert the defense established by the Act of 1943 in the absence of the interposition of such defense by your petitioner to the claim of said respondents. The appeal to the court below in the case of M. W. Caldwell, et al., should not, therefore, have been deemed to raise the question of the constitutionality of the Act of 1943.

cation of a state limitation statute to these suits, Congress not having itself provided a limitation for such suits. The Act has been stricken by the court below solely on the theory that it is unconstitutionally discriminatory against rights arising under the federal wage and hour statute and denies equal protection of the law to those making claims under such statute.

This Court Has Jurisdiction

1. The statutory authority under which jurisdiction is invoked is Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

2. The date of the judgment to be reviewed is April 25, 1947, in each case.

3. The court below has held invalid the Alabama Act of 1943, *supra.* Petitioner would have appealed, but for the fact that the judgments below were not "final" and this court has stated that an appeal will not lie, under Section 240 (b) of the Judicial Code, except from a final judgment. *Slaker v. O'Connor,* 278 U. S. 188.

Question Presented

May a state enact a statute of limitation for all suits "accruing under laws respecting the payment of wages, overtime, damages, fees and penalties" when, Congress not having prescribed a limitation for suits of such type arising under the Fair Labor Standards Act of 1938, the effect of the state legislation is to make the limitation applicable to suits under the federal statute as well as to suits arising under state laws?

Reasons Relied on for Allowance of the Writs

1. The lower court has held, in effect, that Alabama has endeavored to place suits brought to enforce rights granted

by state or federal statutes for overtime pay, liquidated damages and attorneys' fees in a different classification, for limitation purposes, from that in which it places suits to recover for personal services in which no such statutory rights can be invoked and in which the express or implied agreement of the parties controls; and this is held to violate Article 6 and Section 1 of Amendment 14 of the Constitution of the United States. **

In that aspect of the case in which the equal protection clause is invoked, the Circuit Court of Appeals decides an important federal question in a way probably in conflict with applicable decisions of this court. Without attempting to deny the obvious fact that there are substantial differences between such statutory suits and suits in which such statutes may not be invoked, the court below has prohibited separate classification of the two types of suits. Thereby, the court disregards, without even attempting to distinguish, the decisions of this court granting the states wide lattitude in classification matters and upholding any classification not palpably arbitrary and unreasonable. *Montoya v. Gonzales,* 232 U. S. 375, 378; *Canadian Northern Ry. Co. v. Eggen,* 252 U. S. 553, 561; *Metropolitan Casualty Ins. Co. v. Brownell,* 294 U. S. 580, 583; *New York Rapid Transit Corp. v. New York,* 303 U. S. 573, 578.

** The decision below is predicated on a construction by the court below of the Act of 1943 whereby such statute is deemed not to cover suits to recover for personal services where no statute gives the right to payment or affects the extent of the employer's liability, that is, the ordinary common law suit for wages or on contract. As appears from our discussion of the subject under Point A of our brief, this construction of the Alabama statute is of very doubtful propriety and, if it is erroneous, the decision below falls of its own weight. But the grave constitutional issues remain, even if the Act was correctly construed below.

The other aspect of the decision below, invoking Article 6 of the Constitution, amounts to the enunciation of one or more of the following novel principles:

(a) Article 6 prohibits a state from enacting a general statute of limitations applicable to all claims of a designated class if any claims arising under a federal statute are included within such class; or

(b) Article 6 more severely restricts a state in classifying actions than does the equal protection clause, even though the state's classification is not directed against rights according to their source, but covers all claims within the class, however arising; or

(c) Article 6 prohibits a state from prescribing limitations which will be applicable to suits in the state under a designated class of federal and state statutes unless the state first enacts a statute like those included within the designated class; or

(d) By force of Article 6, a state may not enact a general statute of limitations that has the effect of covering suits under a federal statute even though such federal statute establishes a new class of rights and Congress does not specify a limitation therefor.

No decision by this court has ever ascribed any such meaning to Article 6. The decision in *Republic Pictures Corp. v. Kappler,* 327 U. S. 757, involved an Iowa statute markedly different from the Act of 1943. The absence of an opinion by this court on the questions raised in the *Kappler* case, and the broad language of the opinion of the Circuit Court of Appeals for the Eighth Circuit in that case, may have influenced the court below in ascribing to Article 6 the meaning given it in these cases. *This court has not decided, but should decide, the important question*

of the effect of Article 6 on state legislation in a field left open by Congress. Does Article 6 forbid state action in such a field under a classification that meets the test of the equal protection clause where, the classification being effected, the state legislation affects claims arising under federal statutes in the same manner as claims under like state statutes? The court below says this question should be answered affirmatively, but this court should determine the issue.

2. The decision of the Circuit Court of Appeals is probably in conflict with the decision of another Circuit Court of Appeals on substantially the same matter.

If we correctly understand the rationale of the decision in *Swick v. Glenn L. Martin Co.*, 160 Fed. (2d) 483, the decision below conflicts with the decision of the Fourth Circuit.

3. The Circuit Court of Appeals has decided important questions of local law probably in conflict with the applicable local decisions.

The court below has given the Act of 1943 a construction which has the effect, under that court's ideas of the meaning of the equal protection clause and Article 6 of the Constitution, of making the statute unconstitutional. The statute is not necessarily so construed, because it may be held to cover suits for wages in which no statutory rights may be invoked; and, if so construed, the judgment below is erroneous, even if the Constitution has the meaning ascribed to it below. In accordance with the Alabama decisions, the statute should have been given a construction consistent with its constitutionality. *State v. Inman,* 239 Ala. 348, 195 Sou. 448.

4. Jurisdiction should not be denied, though there is no final judgment, because of the great importance of the decision below.

(a) If the decision stands, the litigation of Civil Action No. 551 will be unduly protracted. Either a six year or three year limitation probably will be applied. The necessarily voluminous testimony and extensive investigations, even under a one year limitation, will be unduly multiplied, with complete uncertainty as to the necessity therefor. Numerous additional intervenors, whose claims are barred if the Act of 1943 is valid, may enter the case. This court has properly allowed writ of certiorari where to deny it would protract litigation (*Spiller v. Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117, 121); and where the issue decided below is "fundamental to the further conduct of the case" (*United States v. General Motors Corp.*, 323 U. S. 373, 377).

(b) There are presently pending in the federal courts in Alabama portal-to-portal suits involving tens of thousands of employees and numerous employers, in which recoveries aggregating many millions of dollars are sought. Conduct of the trial of all such cases will be simplified by a final determination of the validity of the Act of 1943.

(c) At least fifteen states now have specific limitations designed to cover suits under the Fair Labor Standards Act. [*4] Until this court delineates the scope of the equal protection clause and Article 6, as applied to such statutes,

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[*4] Colo. (Ch. 123, L. 1945); Del. (Sec. 5133, Rev. Code of 1935, as amended by S. 123, L. 1947); Fla. (Sec. 95.11, Stat. 1941, as amended by Ch. 21892, L. 1943); Ga. (Sec. 3-704, 1933 Code, as amended by Act No. 439, Acts of 1943, effective Mar. 20, 1943); Idaho (S.B.15, L. 1947); Ia. (Ch. 222, L. 1945); Md. (Ch. 518, L. 1945); Minn. (Ch. 513, L. 1945); Mo. (Sec. 1016, Rev. Stats. 1939, as amended by H. B. 500, L. 1946); N. Mex. (H.B. 101, L. 1947); N. C. (Sec. 1-52, 1943 Code, as amended by

by an elucidating decision, there must exist doubt and conflict as to the validity of most, if not all, such statutes. **

(d) The enactment of the Portal-to-Portal Act of 1947 (H.R. 2157, passed by Congress May 1, 1947, signed by President Truman May 14, 1947), does not mitigate against the importance of the decision below. Under Section 6 of said Act, establishing a federal statute of limitations, the many suits pending in Alabama and elsewhere, at the time of its enactment, continue to be governed by the applicable state limitations; and all suits on causes of action accruing prior to such enactment may be governed by the limitations of the states.

Wherefore, your petitioner prays that writs of certiorari issue under the seal of this court in each of said cases.

ALABAMA DRY DOCK & SHIPBUILDING COMPANY, A CORPORATION, *Petitioner*

By: HARRY H. SMITH, *Its Counsel*
622 First National Bank Building
Mobile, Alabama

S.B. 316, L. 1945); N. D. (H.B. 114, L. 1945); Ohio (Sec. 11225, Page's Ohio Gen. Code, Anno., 1937, as amended by S.B. 256, L. 1943); S. D. (Sec. 33.0232 (7) (c), (d), Code of 1939, as added by Ch. 145, L. 1945); Tenn. (Sec. 8598, 1932 Code, as amended by Ch. 130, Acts 1945).

** The present uncertainty is indicated by the fact that at least four special statutes intended to cover suits under the F.L.S.A. have been held unconstitutional: Ia.: *Kappler v. Republic Pictures Corp.* 327 U. S. 757; Ore.: *Fullerton v. Lamm,* 163 Pac. (2d) 941, 165 Pac. (2d) 63; S. C.: *Rockton & Rion Ry. v. Davis* (CCA, 4) 159 Fed. (2d) 291; Wis.: *Kampe v. Michael Yundt Co.,* 11 Labor Cases, 63,500.

On the other hand, at least three special statutes have been held valid: Md.: *Swick v. Glenn L. Martin Co.,* 160 Fed. (2d) 483; Ohio: *Remley v. Triangle Publications,* 11 Labor Cases 63.446; Fla.: *Ott v. Freeman & Son,* 68 Fed. Supp. 445. Both the Ohio and Florida statutes have the effect of providing a shorter period for suits under the Fair Labor Standards Act than is provided for suits on contracts for personal services.

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Respondents and Appellants Below

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

Opinions of Court Below

The opinion of the Circuit Court, covering both cases, has not yet been officially reported, but is set out in the records (Caldwell, R. 29; Andrews, R. 37). The judgments of the District Court were without opinion.

Jurisdiction

This has already been set forth in the preceding petition and is here adopted by reference.

Statement of the Cases

Under "Summary Statement of the Matter Involved" (petition, *ante*), a sufficient statement is made fully to understand these cases, and is here adopted by reference.

Specification of Errors

1. The Circuit Court of Appeals erred in holding that Act No. 394 of the Legislature of Alabama of 1943 (General Acts of Alabama, 1943, page 363), hereinafter called the Act of 1943, is unconstitutional under Section 1 of Amendment 14 of the Constitution of the United States.

2. The Circuit Court of Appeals erred in holding that the Act of 1943 is unconstitutional under Article 6 of the Constitution of the United States.

THE ARGUMENT

Summary of the Argument

Respondents do not claim, nor did the court below hold, that one year is an unreasonable limitation period for suits under the Fair Labor Standards Act. We submit that, this being so, the Act of 1943 is valid if it has general application to all suits within a proper classification of actions.

The decision of the Circuit Court of Appeals has the effect of denying this proposition. Your petitioner submits that the court below thereby determined important federal questions erroneously, by a decision of great importance.

Point A: The Act of 1943 is general legislation.

The Act of 1943 has never been construed by a state court, but it may be construed to cover all suits where compensation for personal services is sought, whether arising under statutes or under the common law. The act applies to all suits accruing under laws respecting the payment of wages; and the word "laws" means both the statutory and the common law. *Tennessee Coal, Iron & Ry. Co. v. Roussell,* 155 Ala. 435, 447; 46 Sou. 866, 870. The reference to the Fair Labor Standards Act and "similar acts" is not to such statutes *exclusively,* but only *specifically,* and may be deemed to make it certain that statutes are included within the word "laws," a word manifestly including the rules of the common law. If such construction be proper, the decision of the court below falls of its own weight. Such construction should be applied, if it is essential to the constitutionality of the statute. *State v. Inman,* 239 Ala. 348; 195 Sou. 448.

But even if the construction accorded the statute in the court below is the only permissible one, the result is the same because the statute still applies generally to all claims within a class that is sufficiently broad to meet any constitutional test. The statute manifestly covers *all* suits under *all* statutes respecting the payment of overtime pay, liquidated damages, etc., whether such statutes be heretofore or hereafter enacted by any governmental body, including any state.

The Act of 1943 cannot properly be said to "single out and discriminate against rights arising under the federal

statute," despite the lower court's opinion to the contrary. It is not directed against claims because they accrue under a federal act. *It has practical application to the suits which may be brought in Alabama under the laws of the many states which have enacted wage and hour statutes similar to the Fair Labor Standards Act.* As we shall see, the fact that Alabama may not presently have a wage and hour law itself, though the adoption of such a law is advocated by its governor and such a law has been introduced in its legislature, is completely immaterial (unless Article 6 of the Constitution is to be given a new meaning) The important fact is that the statute, even as construed below, covers suits for overtime pay, liquidated damages and fees, arising under state laws as well as under federal law.

The generality of the Act of 1943 is not affected by the reference "specifically" to the Fair Labor Standards Act. The statute would have the same effect if such reference and the reference to "all other similar acts" were omitted; and, in any event, the words last quoted demonstrates the general coverage of the statute.

If it be conceded that the Legislature of Alabama had the Fair Labor Standards Act in mind when it adopted the Act of 1943, and that the Legislature was influenced by the spread of suits under such statute, the result is the same. The motive of the legislature is immaterial. *Doyle v. Continental Ins. Co.,* 94 U. S. 535, 541; *Chase Securities Corp. v. Donaldson,* 325 U. S. 304, fn. p. 314; *Soon Hing v. Crowley,* 113 U. S. 703, 710. The statute applies equally to all claims within the class and must be judged according to its natural and reasonable effect.

Point B: The classification embodied in said statute is valid under the equal protection clause of the Constitution of the United States.

The proper classification, for limitation purposes, of suits under wage and hour statutes has been a subject of considerable dispute by the lower courts. Such suits invoke an unusual and novel set of rights, unlike those known to the common law and differing from those existing under any other type of statute. It is not surprising that the lower courts have had difficulty in deciding how such suits should be treated within the existing framework of the limitation statutes of the several states. Thus, such suits have been regarded variously as suits for penalties, *[1] or under statutes, *[2] or on specialties, *[3] or for wages, *[4] or on contract. *[5] There would seem to be some merit in each of the several views.

To meet the problem, and avoid confusion, the legislatures of at least eighteen states already have endeavored to pass legislation clearly covering suits under the Fair Labor Standards Act *[6] (some of such legislation being also directed at similar suits under like state laws). Alabama dealt with the problem in this way, by the Act of 1943. Except for that statute, it could be argued that suits under wage and hour statutes should be subject to any of the following sections of Title 7 of the Code of Alabama of 1940: (a) Section 21, as on a "specialty"; (b) Section 21, as on a "simple contract"; Section 24, as on an "open or unliquidated account"; (c) Section 26, as for a "penalty given by statute"; (d) Section 26, as an action "for any

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*[1] *Southern Package Corp. v. Walton*, 196 Miss. 786, 18 Sou. (2d) 458; *cert. den.*, 323 U. S. 762 (Miss.)

*[2] *Cannon v. Miller*, 155 Pac. (2d) 500 (Wash.)

*[3] *Bright v. Hobbs*, 56 Fed. Supp. 723 (Md.)

*[4] *Loggins v. Steel Const. Co.*, (CCA, 5) 129 Fed. (2d) 118 (La.)

*[5] *Reliance Storage & Inspection Co. v. Hubbard*, 50 Fed. Supp. 1012 (Va.)

*[6] See footnotes 4 and 5 to petition for writs of certiorari, *ante*, pp. 9 and 10.

injury to the person or rights of another, not arising from a contract, and not herein specifically enumerated."

Respondents necessarily contend, and the court below has necessarily decided, that suits under the Fair Labor Standards Act and similar acts are so like unto suits where no such statute may be invoked that the equal protection clause forbids Alabama to classify them differently. This approach requires a disregard of the differences between the two types of suits. Succintly stated, such differences are predicated on the fact that where no statute is invoked, the actual agreement of employer and employee controls, whatever such agreement may have been; while in suits where laws like the Fair Labor Standards Act are invoked, the statute itself governs the extent of recovery, arbitrarily fixes the amount of damages to be awarded, authorizes attorneys' fees, etc. In practical effect, suits under the federal wage and hour law and similar laws may have many attributes not to be found in any suit which a person working in Alabama, and not engaged in commerce, could bring. We indicate some: *7

(a) Non-productive "working time" is compensable, despite any contrary agreement of employer and employee;

(b) Extra pay must be given for work in excess of forty (40) hours in any week;

(c) Liquidated damages in an amount equal to the basic recovery must be awarded;

(d) Attorneys' fees are allowed the claimants;

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*7 We do not in this brief endeavor to consider such changes as may have been effectively made by the Portal-to-Portal Act of 1947 in the Fair Labor Standards Act of 1938, because the same are immaterial here. The fundamental differences between suits under such statutes and suits for wages at the common law remain; as do the grave constitutional issues raised by the lower court's decision.

(e) The employer must keep records and deliver them in court or their absence may be deemed to give rise to the presumption of liability;

(f) Compromise and settlement is prohibited in many cases and restricted in all;

(g) The employer does not have the advantage of the defense of estoppel;

(h) Mass suits may be brought by a "representative" of the employees and all those "similarly situated" may intervene until final judgment.

Not a single one of these attributes is to be found in a suit in Alabama to recover for personal services where no such statute is invoked.

In truth, the vital elements of such suits are creatures of statute and are subject, as to their nature and extent, to judicial construction of the rights created by the statutes and of the particular statutory provisions with reference to the prosecution of such rights. In most portal-to-portal cases, neither employer nor employees intended that compensation should be paid for the time or activity involved; but the law, as construed, makes their intention or agreement immaterial.

This court has held that the state legislatures have a wide lattitude in determining classification questions under the equal protection clause. *New York Rapid Transit Corp. v. New York,* 303 U. S. 573, 578. In many instances, this court has expressly approved classifications predicated, we submit, on differences far less substantial than those considered by the Legislature of Alabama when it made the classification embodied in the Act of 1943. *Cf., Montoya v. Gonzales,* 232 U. S. 375; *Canadian Northern Ry. Co. v. Eggen,* 252 U. S. 553; *Metropolitan Casualty Ins. Co. v.*

Brownell, 294 U. S. 580. We submit that these decisions are in conflict with the decision below.

Respondents say that the cases at bar are founded *ex contractu.* If this be conceded, they do not profit. Alabama's statutes, contained in Title 7 of the Code of 1940, allow ten years for suits on contracts under seal (Section 20); six years for suits on any simple contract (Section 21); three years for suits on an open or unliquidated account (Section 24)—all actions *ex contractu.* If the differences between such causes justify different classification, may not the legislature separately classify suits in which the construction of a law, and not the express or implied agreement of the parties, determines the existence and extent of liability?

The fallacy in the decision below, having the effect of requiring dissimilar suits to be classified together, is further indicated by the failure of respondents or the court below to say whether the Alabama three year statute, or the six year statute, *must* be applied to suits under the Fair Labor Standards Act. If the suits at bar were held to be covered by the three year statute, because the amount sought is unliquidated, would such classification deny equal protection of the law to respondents? *Must* their claims be classified under either such statute, and, if so, which one?

Again, the court below is wrong or every decision applying any limitation other than the "contract" or "wages" limitation of a state is wrong as a matter of constitutional law.

The court below purported to find lack of equal protection in the failure of Alabama to have a statute giving rise to claims that would be subject to the Act of 1943. The propriety of such a construction of the Alabama laws is doubtful, because it would seem that suits under Sec-

tion 474 of Title 48, and Section 666 of Title 7, Code of Alabama of 1940, might well be subject to the Act of 1943. In any event, we submit that the court below has enunciated a new principle if it says that the equal protection clause forbids a state to reasonably classify causes of action and provide a limitation therefor unless the state first itself enacts a statute falling within the class identified.

Let us suppose that Alabama had a statute identical to the Fair Labor Standards Act, but applying to employees engaged in intrastate commerce. There would still be many wage-earners in the state not covered by either statute, because many classes of employees are expressly excluded. The alleged vice of denial of equal protection would still exist, for the reason that those entitled to the benefits of the state or federal act would be subject to a shorter limitation period than those excluded from the coverage of the statute. The same question of the propriety of the classification would remain. The existence, *vel non*, of an Alabama wage and hour law is obviously immaterial.

All the equal protection clause requires is that claims of like dignity and character be treated alike; and this Alabama has done. *Pufahl v. Estate of Parks*, 299 U. S. 217, 227.

It should be noted that, everything else aside, the Act of 1943 does not adversely affect any common law cause of action which any of the respondents may have. If they wish to do so, they may sue on their express or implied contracts of employment and, if they do, the six or three year limitation will be applied. Only their election to proceed under the statute leads to the classification of their claims under the Act of 1943. Equal protection would appear to be given for the reason, if for none other, that respondents retain every right and remedy that the ordi-

nary employee in Alabama, not subject to the Fair Labor Standards Act, is given.

We respectfully submit that this court should grant the writs of certiorari in order to make the decision in these cases conform with the applicable decisions of this court declaring the scope of the equal protection clause.

Point C: This court should hold that said classification is not invalid under Article 6 of the Constitution of the United States.

The court below has purported to find a discrimination against rights arising under the Fair Labor Standards Act that renders the Act of 1943 invalid under Article 6. It is fundamental that every limitation statute which does not allow the longest period recognized by the state law for the bringing of any kind of action is "discriminatory" against the actions given the shorter period. But such discrimination has never been regarded as unconstitutional so long as a reasonable time is allowed and a reasonable classification effected. This court has never, but should, decide the question of the limits, if any, imposed by Article 6 upon the power of a state to enact general statutes of limitation and make them applicable to suits under both state and federal laws of the same type, so long as their application to suits under federal statutes is not forbidden by Congressional action on the subject.

The decision below may be rationalized only if Article 6 has one or more of the meanings listed in our petition to this court (*ante*) under paragraph 1 of our "Reasons Relied on for the Allowance of the Writs." To give any such meaning to Article 6, is to establish new principles of constitutional law, of great importance.

No such principles are to be found in *Republic Pictures Corp. v. Kappler,* 327 U. S. 757. The Iowa statute stricken

in that case sought to provide a six months limitation for claims arising "pursuant to the provisions of any federal statute wherein no period of limitation is prescribed." Such an act would appear to be invalid under the equal protection clause, because of the obvious impropriety of attempting to lump all claims under many different kinds of statutes within one limitation, directed exclusively to the source of the claims. Similarly, Article 6 may be deemed to prohibit a discrimination against rights under federal statutes and in favor of rights under similar state statutes. We do not understand that this court went further than to enunciate these principles when it affirmed the *Kappler* case, without opinion.

The decisions cited by the court, on such affirmance, lead to this conclusion. *McKnett v. St. Louis & S. F. R. Company,* 292 U. S. 230, held invalid an Alabama statute having the effect of closing the doors of the state to suits arising outside Alabama, but founded on a federal statute, though suits founded on the statutes or common law of a sister state would be entertained. *Miles v. Illinois Central R. Company,* 315 U. S. 698, denied the right of Tennessee to prohibit the prosecution of a suit in Missouri which the claimant had the right, by force of federal statute, to prosecute. In the *McKnett* case there was obvious discrimination; and in the *Miles* case there was an absolute denial of a federal right. The Act of 1943 meets the test of both cases: It treats rights under the federal statute just as it treats rights under similar state laws; it does not deny the existence of any federal right, because there is no federal right to any particular limitation period, Congress not having acted. In reality, the Act of 1943 affects only the *remedy,* not the *rights,* and then only generally.

The true limits of Article 6, as applied in such cases as those at bar, should be held to be those indicated in *Pufahl v. Estate of Parks,* 299 U. S. 217, also cited by this court in the *Kappler* case. There a general Illinois statute of limitations was applied against a right arising under a federal statute because the state treated the federal claim identically with "others of equal dignity and like character." (p. 227).

The prevalent confusion in regard to the meaning of Article 6 is emphasized by *Swick v. Glenn L. Martin Co.,* 160 Fed. (2d) 483, decided March 31, 1947, where a statute directed *exclusively* to suits under the Fair Labor Standards Act was held to be constitutional. In Maryland, suits under such federal act had been regarded as suits on a specialty and not as suits on contract; but the legislature amended the statute to give them an exclusive classification, with the same limitation as that provided for suits on contract. The court held ". . . It was clearly within the power of the Maryland legislature to view the situation realistically and to amend the historic rule as to statutory specialties so as to exclude therefrom suits based on obligations imposed by the federal statute and to place them in the category better suited to their intrinsic nature." The result of the court's decision is that suits brought in Maryland under state statutes like the Fair Labor Standards Act will, presumably, still be subject to the twelve year limitation applicable to suits on a specialty, while suits under the federal statute will be given the shorter period of three years; and the decision may be questionable on this ground. But the language of the Fourth Circuit, embodying the crux of its decision, as quoted above, is in direct conflict, we submit, with the decision of the court below. Even if it be assumed, though the question is arguable, that in the absence of the Act

of 1943, the Alabama three year or six year limitation would have been applied to suits under wage and hour statutes, the differences between such suits would appear to be amply substantial to allow the legislature "to view the situation realistically and to amend the historic rule" so as to classify all such suits together.

CONCLUSION

If it be granted that there are substantial differences between claims under wage and hour statutes and suits at the common law where no such statutes may be invoked and the actual agreement of the parties controls (and we submit that this must be granted), then the decision below has the anomolous result of forbidding separate classification of dissimilar suits. Such result is attained by applying the equal protection clause in a manner probably in conflict with the applicable decisions of this court and by ascribing to Article 6 a meaning never given it by this court.

If Congress and many states establish by novel legislation new rights and liabilities, not known to the common law, must a state not enacting such legislation regard its limitation statutes as "frozen" unless it first proceeds to establish such extraordinary rights and liabilities by statutes similar to those enacted elsewhere? Is this the constitutional rule even where, under the existing state limitation statutes, there is a reasonable basis for doubt as to which limitation would be applied to the new class of rights, in the absence of specific legislation on the subject?

We respectfully submit that this court should grant writs of certiorari in each of these cases and determine the important federal questions presented.

Respectfully submitted,

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APPENDIX

Act of 1943 (General Acts of Alabama, 1943, page 363, approved July 6, 1943):

No. 394 (S. 166—Simpson)

AN ACT

To limit the time within which suits may be brought in the courts of this State for the recovery of wages, overtime, damages, fees or penalties accruing under laws respecting the payment of wages and overtime, and specifically under the Act of Congress designated as the Fair Labor Standards Act of 1938 and similar laws.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1: That all suits and actions for the recovery of wages, overtime, damages, fees or penalties accruing under laws respecting the payment of wages, overtime, damages, fees and penalties, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938, as same has been or may hereafter be amended, and all other similar Acts shall be brought within one year after the accrual of such cause of action, and all such causes of action accruing prior to the date hereof shall be brought within one year after the passage of this Act. This Act shall not effect suits pending at the time of its passage.

Section 2. This Act shall become effective upon its signature by the Governor.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Approved July 6, 1943.

Title 7, Section 20, Code of Alabama of 1940:

Limitation of ten years.—The following must be commenced within ten years:

Actions founded upon any contract or writing under seal.

Actions for the recovery of lands, tenements, or hereditaments, or the possession thereof, except as herein otherwise provided.

Motions and other actions against sheriffs, coroners, constables, and other public officers, for nonfeasance, misfeasance or malfeasance in the office.

Title 7, Section 21, Code of Alabama of 1940:

Limitation of six years.—The following must be commenced within six years:

Actions for any trespass to person or liberty, such as false imprisonment, or assault and battery.

Actions for any trespass to real or personal property.

Actions for the detention or conversion of personal property.

Actions founded on promises in writing not under seal.

Actions for the recovery of money upon a loan, upon a stated or liquidated account, or for arrears of rent due upon a parol demise.

Actions for the use and occupation of land.

Motions and other actions against the sureties of any sheriff, coroner, constable, or any public officer, or actions against the sureties of executors, administrators, or guardians, for any nonfeasance, misfeasance, or malfeasance, whatsoever, of their principal; the time to be computed

from the act done or omitted by their principal, which fixes the liability of the surety.

Motions and other actions against attorneys at law, for failure to pay over money of their clients, or for neglect or omission of duty.

Actions founded upon judgments obtained before justices of the peace of this state.

Actions upon any simple contract or specialty, not herein specifically enumerated.

Title 7, Section 24, Code of Alabama of 1940:

Limitation of three years.—The following must be commenced within three years:

Actions to recover money due by open or unliquidated account, the time to be computed from the date of the last item of the account, or from the time when, by contract or usage, the account is due.

Proceedings in any court of this state to disbar any attorney, authorized to practice law in this state.

Title 7, Section 26, Code of Alabama of 1940:

Limitation of one year.—The following must be commenced within one year:

Actions for malicious prosecution.

Actions for seduction.

Actions qui tam, or for a penalty given by statute to the party aggrieved, unless the statute imposing it prescribes a different limitation.

Actions of libel or slander.

Actions for any injury to the person or rights of another, not arising from contract, and not herein specifically enumerated.

Title 48, Section 474, Code of Alabama of 1940:

Wages to be paid bi-weekly.—Every public service corporation engaged in transportation doing business in this state, employing as many as fifty or more employees shall be required to make full payment to employees for services performed as often as once every two weeks, or twice during each calendar month, and such payment or settlement shall include all amounts due for labor or services performed up to not less than fifteen days previous to the time of payment. Any public service corporation engaged in transportation who violates this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25.00 nor more than $250.00 for each offense, and each day's violation against each employee shall constitute a separate offense.

Title 7, Section 666, Code of Alabama of 1940:

Wages and salary of deceased employee, to the amount of one hundred dollars, paid to widow and exempted.—Whenever an employee of another shall die intestate and there shall be due him as wages or salary, a sum not exceeding one hundred dollars, the debtor may discharge himself from liability therefor by paying such amount to the widow of the deceased employee, or, if there be no trol of his minor child or children, or either, as the case may be, who may sue for and recover the same as part of widow, to the person having the actual custody and conthe one thousand dollars in personalty exempted to them.